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PTO/SB/33 (07-05)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

5577-323

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on August 29, 2005

Signature

Typed or printed name Audra Wooten

Application Number

09/825,078

Filed

April 3, 2001

First Named Inventor

Robert DeLima

Art Unit

2155

Examiner

Bruckart, Benjamin R.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

applicant/inventor.

assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

attorney or agent of record. **40,133**
Registration number _____

Signature

David K. Purks

Typed or printed name

(919) 854-1400

Telephone number

attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____

August 29, 2005

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

*Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



Attorney Docket No. RSW920000141US1/5577-323

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Roberto DeLima et al.

Conf. No.: 9743

Application No.: 09/825,078

Group Art Unit: 2155

Filed: April 3, 2001

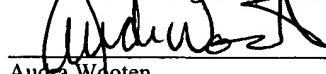
Examiner: Benjamin R. Bruckart

For: **QUALITY OF SERVICE IMPROVEMENTS FOR NETWORK TRANSACTIONS**

Date: August 29, 2005

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Audra Wooten

REASONS IN SUPPORT OF APPLICANTS'
PRE-APPEAL BRIEF REQUEST FOR REVIEW

This document is submitted in support of the Pre-Appeal Brief Request for Review filed concurrently with a Notice of Appeal in compliance with 37 C.F.R. 41.31 and with the rules set out in the OG of July 12, 2005 for the New Appeal Brief Conference Pilot Program.

No fee or extension of time is believed due for this request. However, if any fee or extension of time for this request is required, Applicants requests that this be considered a petition therefor. The Commissioner is hereby authorized to charge any additional fee, which may be required, or credit any refund, to our Deposit Account No. 09-0461.

REMARKS

Applicants hereby request a Pre-Appeal Brief Review (hereinafter "Request") of the claims finally rejected in the Final Office Action mailed June 3, 2005 ("Final Office Action") and the Advisory Action mailed August 2, 2005 ("Advisory Action"). The Request is provided herewith in accordance with the rules set out in the OG dated July 12, 2005.

Claims 1-4, 6-21, 23-34, 37-39, and 41-57 are pending in this application. Claims 1-4, 7-35, 37-39, and 42-52 stand rejected under 35 U.S.C. Sec. 103(a) as unpatentable over U.S. Patent

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No. 6,768,738 by Hill et al. ("Hill") in view of U.S. Publication No. 2002/0010798 by Ben-Shaul et al ("Ben-Shaul") and in further view of U.S. Patent No. 6,574,218 by Cooklev ("Cooklev").

See Advisory Action, page 2. Applicants submit that many of the recitations of the pending claims are not taught or suggested by these references for at least the reasons discussed herein and in Applicants' previously filed Amendments of July 18, 2005; April 4, 2005; and December 15, 2004. Therefore, Applicants respectfully request review of the present application by an appeal conference prior to the filing of an appeal brief. In the interest of brevity and without waiving the right to argue additional grounds should this Petition be denied, Applicants will only discuss the particular errors made in the rejections of the independent Claims 1, 19, and 37.

Independent Claim 1 recites (underlining added):

1. (Currently amended) A method of providing improved quality of service over a series of related messages exchanged between computers in a networking environment, comprising:

determining one or more transactional quality of service ("TQoS") values to be applied to the related messages;

using the determined TQoS values when transmitting at least one of the related messages for delivery to a particular one of the computers, wherein the particular computer is a client computer;

annotating selected ones of the related messages with information reflecting the determined TQoS values;

transmitting the annotated ones of the related messages with the information reflecting the determined TQoS values from a server computer to the client computer;

receiving the transmitted annotated messages at the client computer; and

transmitting the TQoS values from the client computer to the server computer with subsequent ones of the related messages.

Accordingly, transaction quality of service ("TQoS") is determined for related messages, the related messages are annotated with information that reflects the determined TQoS values, and the annotated messages with the information that reflects the determined TQoS values are transmitted from a server computer to a client computer. Moreover, the annotated related messages from the server computer are received by the client computer, and the received TQoS values are then transmitted from the client computer to the server computer with subsequent ones of the related messages. Applicants submit that at least the highlighted

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recitations of Claim 1 are not taught or suggested by Hill in view of Ben-Shaul and further view of Cooklev. Recitations corresponding to the above-highlighted recitations are also found in the other independent Claims 19 and 37.

In particular, Hill discloses that TQoS values are generated within a switch, and can be sent with outbound packets for internal use only by QoS shapers that "may be distributed throughout the switching modules and the switching fabric (not shown) that interfaces between multiple switching modules." (Hill, Col. 5, line 64 - Col. 6, line 1, emphasis added, See also Col. 4, lines 33-46, and Col. 8, lines 4-50). Hill does not teach or suggest any of the following recitations of amended Claim 1: 1) a server computer that can determine one or more TQoS values to be applied to related messages and annotate related messages with the TQoS values; 2) that such annotated messages could be transmitted from the server computer to a client computer, and received by the client computer; and 3) that the TQoS values from received annotated messages can be transmitted from the client computer to the server computer with subsequent ones of the related messages.

The Final Office Action cites Ben-Shaul and contends that it discloses "sending messages to a particular computer". However, the Final Office Action also acknowledges on Page 4 that "Ben-Shaul ... [does] not explicitly state sending the TQoS values to [a] server". The portions of Ben-Shaul cited in the Final Office Action appear to disclose redirecting of client requests based on which server contains pages that have embedded objects that are requested by the client. The "embedded objects" that are referred to in Ben-Shaul are within pages on a server. Applicants submit that none of the cited portions of Ben-Shaul disclose that a computer can annotate related messages with determined TQoS values, or that such annotated messages with TQoS values can be transmitted between computers, or that TQoS values received from annotated messages can be transmitted back to the sending computer with subsequent ones of the related messages. Accordingly, Applicants submit that Ben-Shaul does not teach or suggest any of the three recitations identified above as also lacking from the disclosure of Hill.

The Final Office Action also cites to Col. 7, lines 46-52 of Cooklev with the contention that it discloses "transmitting the TQoS values from the client computer to the server computer

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with subsequent ones of the related messages". (Final Office Action, Page 4). The cited portions of Cooklev are repeated below for reference (emphasis added):

The source coding rate is controlled ultimately by the client 112 (Fig. 2) based on the client's connection rate to the packet network 102 (Fig. 2). This rate can be communicated to the server at any time, and the source coding rate in a preferred embodiment is adaptive.

Applicants submit that the source coding rate communicated by the client 112 to the server is not a TQoS value that was received within an annotated message from the server. Moreover, the source coding rate is not transmitted "from the client computer to the server computer with subsequent ones of the related messages" as recited in Claim 1.

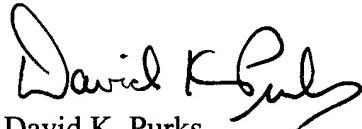
Accordingly, Applicants submit that if one who is skilled in the art were to combine the teachings of Hill, Ben-Shaul, and Cooklev, the combined references would not teach or suggest every one of the following recitations of amended Claim 1: 1) a server computer that can determine one or more TQoS values to be applied to related messages and annotate related messages with the TQoS values; 2) that such annotated messages could be transmitted from the server computer to a client computer, and received by the client computer; and 3) that the TQoS values from received annotated messages can be transmitted from the client computer to the server computer with subsequent ones of the related messages.

For at least these reasons discussed above, at least the three recitations highlighted above in independent Claim 1 are lacking from Hill in view of Ben-Shaul and in further view of Cooklev. Independent Claims 19 and 37 are system and computer program product claims that include recitations that correspond to those highlighted above as lacking from Hill in view of Ben-Shaul and in further view of Cooklev. Consequently, Claims 19 and 37 are submitted to be patentable at least for the reasons explained above for Claim 1.

Therefore, Applicants respectfully request that the present application be reviewed and the rejections of independent Claims 1, 19, and 37, and the other pending claims that depend therefrom, be reversed by the appeal conference prior to the filing of an appeal brief.

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Respectfully submitted,



David K. Purks
Registration No. 40,133

USPTO Customer No. 46589
Myers Bigel Sibley & Sajovec
Post Office Box 37428
Raleigh, North Carolina 27627
Telephone: 919/854-1400
Facsimile: 919/854-1401